

1 STEPHANIE KRENT (*Pro Hac Vice*)
2 ALEX ABDO (*Pro Hac Vice* motion forthcoming)
KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY
2 475 Riverside Drive, Suite 302
3 New York, NY 10115
4 Tel.: (646) 745-8500
Email: stephanie.krent@knightcolumbia.org

5 CARA GAGLIANO (SBN 308639)
6 AARON MACKEY (SBN 286647)
ELECTRONIC FRONTIER FOUNDATION
7 815 Eddy Street
8 San Francisco, CA 94109
9 Tel.: (415) 436-9333
Email: cara@eff.org

10 MARIA DEL PILAR GONZALEZ MORALES (SBN 308550)
11 SHUBHRA SHIVPURI (SBN 295543)
SOCIAL JUSTICE LEGAL FOUNDATION
12 523 West 6th Street, Suite 450
Los Angeles, CA 90014
13 Tel.: (213) 973-4063
Email: pgonzalez@socialjusticelaw.org

15 Attorneys for Plaintiffs A.B.O. Comix, Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-
Magallanes, Domingo Aguilar, Kevin Prasad, Malti Prasad, and Wumi Oladipo

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

19 A.B.O. Comix, Kenneth Roberts, Zachary
Greenberg, Ruben Gonzalez-Magallanes,
20 Domingo Aguilar, Kevin Prasad, Malti Prasad,
and Wumi Oladipo,

22 Plaintiffs,

23 v.

24 County of San Mateo and Christina Corpus, in
her official capacity as Sheriff of San Mateo
25 County,

26 Defendants.

Case No.: 3:23-CV-1865-JSC

OPPOSITION TO DEFENDANTS'
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SUR-OPPOSITION

Complaint Filed: March 9, 2023

This Court should reject Defendants' motion for leave to file a sur-opposition to Plaintiffs' remand motion, ECF No. 40, because it is irrelevant. For the reasons Plaintiffs identified—which Defendants have not contested—remand is appropriate under 28 U.S.C. § 1367(c). At bottom, only state courts can authoritatively resolve the novel state-constitutional claims Plaintiffs raise.

A defendant does not and should not have the power to use counterclaims to dictate whether a case proceeds in state or federal court—this principle is at the heart of the well-pleaded complaint rule. *See Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831–32 (2002); *Redevelopment Agency of City of San Bernardino v. Alvarez*, 288 F. Supp. 2d 1112, 1115 (C.D. Cal. 2003). Defendants’ recently filed counterclaims therefore should not alter the Court’s decision whether to exercise supplemental jurisdiction over the Amended Complaint, which raises only novel questions of state law and no federal claims. Nor should they lead this Court to sever the case and retain jurisdiction over the counterclaims, as state courts are “presumptively competent . . . to adjudicate claims arising under the laws of the United States.” *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). In the only case upon which Defendants rely, *Ampleman v. Trans States Airlines, Inc.*, the court found the presence of federal counterclaims relevant to its analysis because those counterclaims were raised before the plaintiffs had amended their complaint and moved to remand, and because the case had already proceeded through discovery and partial summary judgment briefing on one of the state-law claims. 204 F.R.D. 437, 439–40 (E.D. Mo. 2001). Remand would have been inefficient there because of the judicial resources already expended. Not so here.

Because Defendants' recent filings do not alter the Court's analysis of whether to retain jurisdiction over the case—and do not change the fact that remand remains appropriate under § 1367(c) and the judicial values of economy, convenience, fairness, and comity—the Court should deny Defendants' administrative motion.

DATED: June 27, 2023

Respectfully submitted,

/s/ *Stephanie Krent*

Stephanie Krent (*Pro Hac Vice*)

Alex Abdo (*Pro Hac Vice* motion forthcoming)

Knight First Amendment Institute at Columbia University

1 475 Riverside Drive, Suite 302
2 New York, NY 10115
3 T: (646) 745-8500
4 stephanie.krent@knightcolumbia.org

5 Cara Gagliano (SBN 308639)
6 Aaron Mackey (SBN 286647)
7 Electronic Frontier Foundation
8 815 Eddy Street
9 San Francisco, CA 94109
10 T: (415) 436-9333
11 cara@eff.org

12 Maria del Pilar Gonzalez Morales (SBN
13 308550)
14 Shubhra Shivpuri (SBN 295543)
15 Social Justice Legal Foundation
16 523 West 6th Street, Suite 450
17 Los Angeles, CA 90014
18 T: (213) 973-4063
19 pgonzalez@socialjusticelaw.org

20 *Counsel for Plaintiffs*